IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.18958 of 1997

Dated: 12-03-2007

Between:

1. Saili Nagamani, w/o Satyam,
   Hindu, aged about 50 years,
   r/o Tekubaka, via Bhadrachalam,
   Khammam District and 6 others.

... Petitioners

and

1. The Commissioner of Survey, Settlement and Land Records,
   Andhra Pradesh, Hyderabad and 3 others.

... Respondents

ORDER:

Questioning the order of third respondent in Case No.L1/1553/87, dated 10-10-1996, which was communicated through Memo, dated 14-10-1996, the present writ petition has been filed seeking to quash the same.

2. Facts, in brief, are: The lands in an extent of Ac.10-00 in O.S.No.16, situated at Chinapolipaka village, originally belonged to one Kambhammettu Venkata Narasaiah prior to the abolition of the estate. The estate was taken over by the Government under the provisions of the Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, 'the Act') on 10-11-1952. According to petitioners, petitioner Nos.1 and 2 purchased the said land through a registered sale deed, dated 21-06-1963 from the said K. Venkata Narasaiah. They further state that they are in possession of the said land and cultivating the same with dry crop since the date of purchase and are in enjoyment of the same continuously.

The Settlement Officer, Bhadrachalam - third respondent enquired into the claims of petitioners and granted ryotvari patta for the lands in O.S.No.16 measuring an extent of Ac.10-00 re-surveyed as R.S.No.15/part with an extent of He.4-00 situated in Chinapolipaka village by his order, dated 20-03-1980 in S.R.Nos.1936 and 1937/77. Aggrieved by the said order, the Tahsildar, Bhadrachalam preferred an appeal before the Director of Settlements, Hyderabad – second respondent, and second respondent dismissed the said appeal vide order dated 24-05-1985. Assailing the said order, petitioners preferred further appeal before the Commissioner of Survey, Settlements and Land Records, Hyderabad – first respondent and first respondent dismissed the said appeal vide Prodgs. in CSS&LRs.,Ref.No.L1/1147/85, dated 07-10-1987. Aggrieved by the said order, petitioners filed W.P.No.18125 of 1987 and this Court on 06-04-1990 allowed the writ petition and remanded the

matter to first respondent with a direction to consider the documents filed before it. After remand, first respondent again dismissed the appeal vide order dated 10-10-1996 passed in Case No.L1/1553/87 and communicated the same through Memo, dated 14-10-1996, Hence, this writ petition.

3. Heard learned counsel for the parties.

4. A counter affidavit is filed, according to which as on the date of taking over of possession of the land in question by the Government i.e. on 10-11-1952 petitioners were not in possession and hence, they are not entitled to patta and it is also stated in the counter affidavit that there is absolutely no evidence whatsoever worth coming to establish that petitioners or their vendor were in possession of the said land as on 10-11-1952.

5. From a perusal of the entire material available on record, it is clear that petitioners produced certified copy of No.2 Adangal for Fasli1362 and Fasli1362 correlates to the calendar year 1952. Of course, in the counter affidavit, it is stated that Fasli1362 correlates to the calendar year 1953. From the calendar available and also the other material gathered, it is clear that Fasli1362 correlates to the year 1952. Hence, the contention that Fasli1362 correlates to the calendar year 1953 cannot be accepted.

6. Similarly, in the sale deed, dated 21-06-1963 it is clearly mentioned that petitioners' vendor i.e. Venkata Narasaiah was in possession of the land in question for about 25 years prior to the registration of the said sale deed i.e. since 1938. In fact, the said

vendor also has given a statement before the Special Deputy Tahasildar (S.D.T) to the effect that he had been in continuous possession of the lands in question right from 1936. Of course there is a little variation between the statement of the vendor and the recitals in the sale deed. However, in my considered view the said variation may not go to the root of the case to reject the entire case of petitioners. Whether it is of the year 1936 or 1938, it is clear that petitioners' vendor was in possession of the land in question particularly by the time the Estate was taken over on 10-11-1952. When such is the case in my considered view, the Commissioner – first respondent ought not to have rejected petitioners' claim.

Of course, in the No.2 Adangal of Fasli1362 it is mentioned as waste, but from that it cannot be inferred that the land is not at all used for agricultural purposes. May be during that Fasli, the land was not brought under cultivation, but from that it cannot be inferred that the land is not at all brought under cultivation. The only requirement is as to whether the land is cultivable or not. From a reading of the recitals of the sale deed, dated 21-06-1963 it is clear that the land is an agricultural land and the same was purchased for the purpose of agriculture. In this context, the learned counsel has drawn my attention to a judgment of the Supreme Court, reported in **ATHMANATHASWAMI DEVASTHANAM v. K. GOPALASWAMI**[1], wherein at paragraph 5 it was held as follows--

> "The lands in suit, according to the plaint, were uncultivable wastelands covered with shrubs, jungle and the like. They had not been cultivated for a long

> time. Wastelands covered with shrubs, jungle and the like cannot be held to be uncultivable merely on that account or on account of their being not cultivated for a long time. Land, which can be brought under cultivation, is cultivable land unless some provision of law provides for holding it otherwise in certain circumstances."

7. Hence, this Court is of the view that simply by the word waste,

it cannot be construed that the land is fallow and it is not at all brought under cultivation.

8. For the aforesaid reasons, this Court is of the view that the patta granted by the Settlement Officer in favour of petitioners on 20-03-1980 is right and as such the subsequent orders passed by the Director of Settlements on 24-05-1985 and the Commissioner of Survey and Settlements on 10-10-1996 are liable to be quashed.

9. Accordingly, the writ petition is allowed. No costs.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.12-03-2007
GLV

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[1] AIR 1965 SC 338